



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R05-OAR-2017-0323; FRL-9978-45-Region 5]

Air Plan Approval; Illinois; Volatile Organic Compounds

Definition

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a state submission as a revision to the Illinois state implementation plan (SIP). The revision, submitted on May 30, 2017, incorporates changes to the Illinois Administrative Code (IAC) definition of "volatile organic material" or "volatile organic compounds" (VOC). The revision removes recordkeeping and emission reporting requirements related to the use of tertiary butyl acetate (also known as t-butyl acetate) as a VOC. The revision is consistent with an EPA 2016 rulemaking related to tertiary butyl acetate. In addition, Illinois' submission includes the addition of chemical identification information to the list of compounds excluded from the definition of VOC and the deletion of an unnecessary phrase in the definition of VOC. EPA proposed this action on November 2, 2017, and received one public comment in response.

DATES: This final rule is effective on **[insert date 30 days after date of publication in the Federal Register]**.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-R05-OAR-2017-0323. All documents in the docket are listed on the www.regulations.gov web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either through www.regulations.gov or at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Charles Hatten, Environmental Engineer, (312) 886-6031 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Charles Hatten, Environmental Engineer, Control Strategies Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-3031,

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SUPPLEMENTARY INFORMATION: Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA. This supplementary information section is arranged as follows:

- I. What is the Background for this Action?
- II. Public Comment Received and EPA’s Response
- III. What Action is EPA Taking?
- IV. Incorporation by Reference
- V. Statutory and Executive Order Reviews

I. What is the Background for this Action?

On May 30, 2017, Illinois submitted, as a SIP revision, a request to revise and update the definition of VOC at Part 211, Subpart B, Section 7150 (35 IAC 211.7150). Illinois also submitted corrections to chemical names and revisions to chemical identifiers included in the list of compounds excluded from the definition of VOC at 35 IAC 211.7150(a) and a minor deletion of an unnecessary phrase in 35 IAC 211.7150(d).

The revision addresses an existing exemption related to defining tertiary butyl acetate as a VOC. Before this action, the Illinois SIP excluded this compound from the definition of VOC for purposes of VOC emission limitations and VOC content requirements, but defined the compound as a VOC for all

recordkeeping, emissions reporting, photochemical dispersion modeling and inventory requirements that apply to VOC. (69 FR 69298, November 29, 2004). This approach was consistent with EPA's regulation of tertiary butyl acetate at the time this portion of the SIP was originally approved. (64 FR 52731, September 30, 1999).

On February 25, 2016, EPA promulgated a final rule amending the definition of VOC to remove the recordkeeping, emissions reporting, photochemical dispersion modeling and inventory requirements related to the use of tertiary butyl acetate as a VOC. (81 FR 9339, codified at 40 CFR 51.100(s)). See 82 FR 50812 for a more detailed summary of the basis for EPA's 2016 rulemaking. In order to conform to EPA's current definition, Illinois revised its definition of VOC to remove the recordkeeping, emissions reporting, photochemical dispersion modeling and inventory requirements for tertiary butyl acetate within the definition of VOC (35 IAC 211.7150).

Additionally, Illinois amended the list of excluded compounds in 35 IAC 211.7150 by adding the International Union of Pure and Applied Chemistry (IUPAC) names¹ and CAS registry

¹ IUPAC has developed a recognized system of nomenclature for chemical compounds.

numbers², and presenting common names parenthetically.³ Illinois made these changes to eliminate confusion and make it easier to identify specific excluded compounds in 35 IAC 211.7150(a). These changes did not alter the list of excluded compounds and are consistent with the Federal list of excluded compounds in 40 CFR 51.100(s). Finally, Illinois made a minor administrative change by deleting the words "of this Section" in 35 IAC 211.7150(d), which discusses appropriate testing methods and includes a reference to subsection (b) of 35 IAC 211.7150.

On November 2, 2017, EPA published a proposed rule approving Illinois' requested revision to the SIP at 35 IAC 211.7150 and providing a 30-day public comment period. (82 FR 50853, published in parallel with a Direct Final Rule that was subsequently withdrawn, see 82 FR 50811, 60545).

II. Public Comment Received and EPA's Response

EPA received one adverse comment on the proposed approval of the Illinois definition of VOC.

Comment: The commenter stated that EPA should not approve this SIP submission because EPA should not have added tertiary

² Chemical Abstract Service (CAS) numbers are developed by the American Chemical Society. CAS numbers are in widespread use and provide clarity because a single CAS number identifies only one chemical isomer.

³ In Table 6 of Attachment 7 to Illinois' submittal, Illinois lists the chemical compounds excluded from the definition of VOC, using the designations by EPA, IUPAC names, CAS numbers, and commonly used alternative names for each.

butyl acetate to the list of exempted compounds, given that it is a highly reactive and volatile compound. The commenter also asserted that EPA should not have removed the reporting requirement because EPA had previously required recordkeeping and reporting so that it could determine further restrictions. The commenter further stated that "EPA should have enforced the reporting requirement, analysed [sic] the data and determined whether or not tertiary butyl acetate should be further regulated."

EPA's Response: This comment is not applicable to this action, which merely relies on EPA's previous actions and did not require a technical record supporting exclusion of tertiary butyl acetate from the definition of VOC.

The comment primarily concerns two separate EPA actions related to tertiary butyl acetate, the exclusion of the compound from the definition of VOC and the removal of related recordkeeping and reporting requirements, which were taken in 2004 and 2016, respectively. See 69 FR 69298 and 81 FR 9339. EPA provided public comment periods for these actions and responded to any adverse comments received as required by Federal law. In addition, the comment relates to EPA's approval in July 16, 2008, of Illinois' rule excluding tertiary butyl

acetate as a VOC (73 FR 40748). These are issues on which the commenter would be precluded from obtaining judicial review, as the time period to challenge these EPA actions has passed. See Section 307(b) of the Clean Air Act (CAA).

Nevertheless, EPA notes that it has previously addressed the commenter's concerns in the preambles to the final rules referenced above. Those documents discuss in great detail the nature of VOCs, EPA's approach to organic compounds with a negligible level of reactivity, the chemical characteristics of tertiary butyl acetate, and the bases for EPA's 2004 and 2016 decisions to exclude tertiary butyl acetate from the definition of VOC and remove the recordkeeping and emission reporting requirements related to tertiary butyl acetate as a VOC.

III. What Action is EPA Taking?

EPA is approving, as a SIP revision, the removal of the recordkeeping and emission reporting requirements applicable to tertiary butyl acetate as a VOC at 35 IAC 211.7150(e), the addition of chemical identification information for excluded compounds in 35 IAC 211.7150(a), and the removal of the phrase "of this Section" in 35 IAC 211.7150(d) contained in the May 30, 2017, submittal.

IV. Incorporation by Reference

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of the Illinois Regulations described in the amendments to 40 CFR part 52 set forth below. EPA has made, and will continue to make, these documents generally available through www.regulations.gov, and at the EPA Region 5 Office (please contact the person identified in the "For Further Information Contact" section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the State implementation plan, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.⁴

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to

⁴ 62 FR 27968 (May 22, 1997).

approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866.
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);

- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by

Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60 days after date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not

postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: May 10, 2018.

Cathy Stepp,
Regional Administrator, Region 5.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

2. In §52.720, the table in paragraph (c) is amended by revising the entry “211.7150” to read as follows:

§52.720 Identification of plan.

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(c) * * *

EPA-APPROVED ILLINOIS REGULATIONS AND STATUTES

Illinois citation	Title/subject	State effective date	EPA approval date	Comments
* * *	* * *	* * *		
Part 211: Definitions and General Provisions				
* * *	* * *	* * *		
Subpart B: Definitions				
* * *	* * *	* * *		
211.7150	Volatile Organic Material (VOM) Or Volatile Organic Compound (VOC)	1/23/2017	[insert date of publication in the Federal Register], [insert Federal Register citation]	
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